

PART VII.
ADVERSARY PROCEEDINGS

Rule 7005-1

PROOF OF SERVICE

Whenever proof of service is required by the Federal Rules of Bankruptcy Procedure, Local Rule, or order of the Court (other than proof of initial service required to be made pursuant to Fed. R. Bankr. P. 9014 or 7004), the proof shall take the following form:

(a) If made by an attorney appearing in the case or proceeding pursuant to the provisions of Local Rule 2090-1, the attorney may make a certificate of service stating the date and manner of service and the name and address of the person served, certified by the signature of the attorney who made the service.

(b) If made by a person other than an attorney appearing in the case or proceeding pursuant to the provisions of Local Rule 2090-1, the non-attorney shall make a statement under penalty of perjury stating the date and manner of service and the name and address of the person served, signed and sworn to by the non-attorney who made the service and including the non-attorney's name, address, and relation to the party on whose behalf the service is made.

(c) Where a reference is made to service on a group such as "to all creditors on the matrix," the proof of service shall attach a copy of the list or mailing matrix used. The matrix shall be one obtained from the Clerk within ten (10) days before the date of service or from the Court's electronic filing system.

(d) The proof of service shall refer to the pleading or other paper being served and shall affirmatively reflect the service of any exhibits thereto.

(e) Proof of service may appear on or be affixed to the paper served or it may be separately filed. In either event, the proof of service shall be filed promptly after the making of the service.

(f) Proof of service made in accordance with the provisions of this rule shall be taken as prima facie proof of service.

Notes of Advisory Committee

2004 Amendment

This amendment corrects the Bankruptcy Rules citation to that of the currently used citation. Further, it permits a party to print a mailing matrix directly from CM/ECF.

1997 Amendment

This amendment conforms the existing Local Rules to the uniform numbering system prescribed by the Judicial Conference of the United States and to the model system suggested and approved by the Advisory Committee on Bankruptcy Rules of the Judicial Conference's Committee on Rules of Practice and Procedure. In renumbering the Local Rules to conform to the uniform numbering system, no change in substance is intended. This amendment is effective on April 15, 1997.

This rule was formerly Local Rule 2.19(a). The Advisory Committee Notes to the superseded rules may be helpful in interpreting and applying the current rules.

1995 Amendment

The term "proof of service" has been substituted for the term "certificate of service" consistently throughout these amendments when proof of service is required. Amended paragraph (a) establishes the manner in which that proof is to be made. Amended paragraphs (a)(1) and (a)(2) provide that attorneys appearing in a case or proceeding may make proof of service by filing a certificate of service while all others must file a statement under penalty of perjury. This carries forward the intent of former paragraph (g) as to permitting only attorneys to file certificates of service. It also clarifies that non-attorneys may make proof of service if they do so under oath.

The provisions of subparagraph (a)(1) allowing attorneys to make certificates of service do not apply to proof of initial service of contested matters and adversary proceedings required to be made pursuant to Fed. R. Bankr. P. 9014 or 7004. The requirements for proof of this initial service are included in

Fed. R. Bankr. P. 7004 itself. Specifically, Fed. R. Bankr. P. 7004(a) and (g) apply Fed. R. Civ. P. 4(g) in effect on January 1, 1990. Among other things, that rule requires that proof of such initial service shall be made by affidavit unless the person making the service is a United States marshal or deputy marshal.

Subparagraph (a)(3) is former paragraph (b) with the new requirement that the matrix used with a proof of service shall be a current one obtained from the Clerk.

Subparagraph (a)(4) is former paragraph (h) with minor modifications.

Subparagraph (a)(5) and (a)(6) are new, but are consistent with better practice and the requirements of other rules, such as F.R.A.P. 25(d) and Fla. R. Civ. P. 1.080(f).

Other amendments are clarifying or are required by the restructuring of the rule described above.

These amendments were effective on February 15, 1995.